

THE HON'BLE SRI JUSTICE N.BALAYOGI

CRIMINAL PETITION No.8313 of 2011

ORDER:

This petition under Section 482 of Cr.P.C. is filed by accused Nos.1 & 2 seeking to quash the proceedings in P.R.C.No.9 of 2010 on the file of Judicial First Class Magistrate, Amadalavalasa, Srikakulam District.

2. The contention of the petitioners-accused is that the second respondent filed a complaint before the Judicial First Class Magistrate, Amadalavalasa, Srikakulam District alleging that the petitioners-accused trespassed into her house on 08.11.2009 at 8.30 a.m. and committed the offences punishable under Sections 448, 354 and 323 of I.P.C. The said complaint was referred to police under Section 156(3) Cr.P.C. and the same was registered as Crime No.169 of 2009 for the said offences. The Sub-Inspector of Police, Amudalavalasa, after due investigation, filed a final report on 30.11.2009 stating that the second respondent-complainant had not approached the police station to lodge the complaint on 08.11.2009 and that the alleged offence has not taken place.

3. According to the second respondent-complainant, she filed a protest petition on 03.06.2010 before the Judicial First Class Magistrate, Amadalavalasa, Srikakulam District and that the Magistrate recorded her statement, took cognizance of the case in P.R.C.No.9 of 2010 and issued summons to the petitioners herein.

4. The first petitioner is in Indian Army service and whereas, the second petitioner is residing in her own house at Kinthali village of Ponduru Mandal, Srikakulam District. It is the contention of the

petitioners that the second respondent-complainant knowing fully well that the first petitioner is not residing in his house at Kinthali village, intentionally got sent the summons to a false address. The signature on the postal acknowledgement is not that of the first petitioner.

5. It is the further contention of the petitioners that a dispute arose between the petitioners and the father of the second respondent in respect of a small piece of Government vacant land adjacent to the house of the petitioners and that the second respondent and her father tried to occupy the same. Whenever the family members of the petitioners used to pass through the said vacant land, the father of the second respondent used to object them.

6. The sister of the second respondent namely, Pydi Ammaji also lodged a complaint on 22.11.2009 and the same was registered as Crime No.113 of 2009 for the offence under Section 354 IPC. The complaint dated 22.11.2009 lodged by the second petitioner was registered as Crime No.114 of 2009 for the offence under Section 354 read with 34 IPC. In both the cases, final report has been filed by the police on 24.12.2009 stating that the disputes between the parties are about the combined wall and pathway, which is situated in front of the house of the petitioners as well as the father of the second respondent since long time and that the allegations in the complaints are false.

7. It is the further contention of the learned counsel for the petitioners that in view of the existing/prevailing disputes between the petitioners and father of the second respondent, the father of second respondent using his daughters against the petitioners. It is

further contended that the father of the second respondent had also lodged a caveat on 12.11.2009 against the petitioners before the Junior Civil Judge at Rajam with an apprehension of filing a suit against them. Since the F.I.R. does not disclose a cognizable offence, no investigation is permitted by the police officer without prior permission from the concerned Magistrate as required under Section 155(2) of Cr.P.C. The third respondent has been added as a party to the quash proceedings by the petitioners contending that he is behind for the false and vexatious complaints filed against them.

8. On the other hand, the learned Public Prosecutor contended that specific overt acts are attributed to the petitioners in the complaint and that there is no ground to interfere with the impugned proceedings.

9. Heard the learned counsel for the petitioners, and learned Public Prosecutor for first respondent and learned counsel for second respondent. Perused the material available on record.

10. Now the point that arises for consideration in this petition is whether there is any *prima facie* material to prosecute the petitioners for the alleged offences or there is any abuse of process of Court in continuing the proceedings against the petitioners?

11. A perusal of the record goes to show that the second respondent herein filed the complaint against the petitioners herein for the offences punishable under Sections 448, 354 and 323 IPC. The first petitioner is related to the complainant and he is none other than her brother-in-law. Whereas the second petitioner is being called as sister by the complainant. They are neighbours and

their houses are situated in main street of Kinthali village. It is alleged in the complaint that the petitioners taking advantage of her absence, highhandedly and illegally trespassed and occupied the house of the complainant. After knowing the same through the neighbours, she went to the village along with her husband and raised a dispute before the village elders. Though the village elders tried to pacify the matter, the petitioners put a deaf ear. As the complainant raised the dispute, the petitioners bore grudge, came to her house on 8.11.2009 at about 8.30 a.m., attacked the house of the complainant in the absence of her husband.

12. It is specifically alleged in the complaint that the first petitioner pulled and scared the blouse on the body of the complainant and pushed her on ground and tried to remove the saree. Whereas, the second petitioner caught hold her tuft and dragged out her from the house and both the petitioners kicked and beat her indiscriminately all over the body. On hearing her cries, neighbours intervened and rescued her. On the same day, the complainant-second respondent approached the Amadalavalasa Police Station, but the police did not receive the complaint and advised her to file a private complaint as it is a matter civil in nature.

13. Thus, the material on record goes to suggest specific overt acts against the petitioners. The contention of the petitioners is that there is dispute between the parties with regard to a small piece of Government land for a long time. All the contentions raised by the learned counsel for the petitioners are disputed questions of fact, which cannot be gone into by this Court and the

same is a matter that can be gone into by the trial Court during course of trial.

14. As already discussed above, the allegations in the complaint clearly shows *prima facie* material and specific overt acts against the petitioners to prosecute them for the alleged offences. No material is placed to establish any abuse of process of Court and hence, I find no ground to quash the impugned proceedings.

15. In the result, the Criminal Petition is dismissed. The interim stay granted by this Court on 12.09.2011 in CrI.M.P.No.8903 of 2011 shall stand vacated.

Consequently, Miscellaneous Petitions pending, if any, shall stand closed.

05th February 2018
Tsr

JUSTICE N.BALAYOGI

